IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 306 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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M/S GATI CARGO MANAGEMENT SERVICE
(A DIVISION OF M/S GATI LTD)
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Revision Application No. 306 of 2001
MR AR GUPTA for Petitioner No. 1
MR SS PATEL, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/08/2001

ORAL JUDGEMENT

#. Heard Shri AR Gupta for the petitioner on admission of this revision.

#. A complaint under secs.63 and 64 of the Copy Rights Act, 1957 and under sec.420 of the Indian Penal Code was filed by the revisionist against two persons, namely, Ashok Shah and M/s.Gati Clearing. Three prayers were made in the complaint. The first was for direction to the police authorities to make investigation under sec.156(3) of the Code of Criminal Procedure. The other prayer was for direction to the police authorities to search and seize from the premises of the accused all the offending materials as mentioned hereinabove infringing the copy rights of the complainant like blocks, dies, labels, cartoons, containers, stickers, visiting cards, letter heads and other materials, accounts books, bill books and make inquiries and investigation and take such further investigation as the court may deem fit and necessary. The third prayer is residuary of general nature.

#. The order of the learned Metropolitan Magistrate is under challenge. This order shows that the learned Metropolitan Magistrate has refused to take action under sec.156(3) of the Code of Criminal Procedure, and in this way, impliedly prayer (a) of para-18 of the complaint was rejected. This order of rejection can not be said to be illegal, because it is within the jurisdiction of the Magistrate to proceed under secs.200 and 202 of the Code of Criminal Procedure. The Magistrate had directed further inquiry under sec.202 of the Code and did not think it expedient to issue direction to the police under sec.156(3) of the Code. Consequently, this order does not require any interference. However, the grievance of Shri Gupta is, that the second prayer has not been considered and it has not been rejected. This prayer, according to Shri Gupta, should have been considered, because there is prima facie infringement of secs.63 and 64 of the Copy Rights Act. The impugned order is self-contradictory. At one place, the Magistrate has observed that it can not be said that the accused have committed the offences under secs.63 and 64 of the Copy Rights Act. If this was the observation, then the complaint should have been dismissed straightway as contemplated under sec.203 of the Code of Criminal Procedure. However, instead of rejecting the complaint, the Magistrate has proceeded under sec.202 of the Code of Criminal Procedure. Consequently, this observation that it can not be said that the accused have committed offences under secs.63 and 64 of the Code, prima facie, at this stage, is unwarranted and self-contradictory. The second prayer should have been considered, because, the Magistrate has not thought it fit to reject the complaint under sec.203 of the Code of Criminal

Procedure.

#. In view of the above discussions, the revision is finally disposed of at the admission stage with a direction to the Metropolitan Magistrate, Court No.9, Ahmedabad to consider the request of the complainant in para-18(b) of the complaint in accordance with law after hearing the complainant and his counsel and pass suitable order. The Magistrate shall not be influenced by his causal observation that the accused have not committed off Criminal Procedure. Such observation can be made by the Magistrate only after the result of the enquiry under sec.202 of the Code of Criminal Procedure.

August 1, 2001. (D.C. Srivastava, J.)
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